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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/516,457	12/03/2004	Michel Puech	Q84448	2874
23373	7590	07/25/2008	EXAMINER	
SUGHRUE MION, PLLC			LUND, JEFFRIE ROBERT	
2100 PENNSYLVANIA AVENUE, N.W.				
SUITE 800			ART UNIT	PAPER NUMBER
WASHINGTON, DC 20037			1792	
			MAIL DATE	DELIVERY MODE
			07/25/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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7-25-08

In re application of:	Puech	:DECISION ON
Serial no.:	10/516,457	:PETITION
Filed:	December 3, 2004	:
For:	HEATER LINER FOR A PLASMA ETCHING REACTOR, AND AN ETCHING METHOD USING THE LINER	:

This is a decision on the PETITION FILED UNDER 37 CFR 1.181 TO WITHDRAW THE FINALITY OF THE OFFICE ACTION mailed December 20, 2007.

On April 5, 2007, a first non-final office action was mailed. Claims 9-11 were rejected under 35 USC 112, 2<sup>nd</sup> paragraph. (Claim 10 was not listed in the head of paragraph 7 of the Office Action, but is separately discussed near the bottom of p. 4.) On December 20, 2007, a final office action was mailed.

On May 20, 2008, applicant filed the instant petition under 37 CFR 1.181 to formally request the withdrawal of finality of the Office Action of December 20, 2007.

Applicant's position for the withdrawal of the finality is that the grounds of rejection under 35 USC 112, 2<sup>nd</sup> for indefiniteness of the word "suitable" in claim 9, "thermocoaxial type" in claim 10 and "such as" in claim 11 were new grounds of rejection.

#### DECISION

The Office Action mailed April 5, 2007 rejected claim 9 for the phrase "such as", claim 10 for the phrase "thermocoaxial type", and claim 11 for the phrase "such as".

As stated in MPEP 706.07(a),

*"Under present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims, nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p)."*

The rejections of claims 10 and 11 under 35 USC 112, 2<sup>nd</sup> paragraph are not new grounds of rejection because they were presented in the Office Action mailed April 5, 2007. The rejection

of claim 9 under 35 USC 112, 2<sup>nd</sup> paragraph is a new grounds of rejection because it was not present in the Office Action mailed April 5, 2007. The new grounds of rejection was not necessitated by applicant's amendment nor based on information submitted in any information disclosure statement.

The petition is **GRANTED**. The proposed after final amendment filed on March 20, 2008 will be entered, and the examiner will issue a new office action.

Applicant further requests a refund for the extension fees paid in connection with filing a Notice of Appeal on May 20, 2008.

A refund may be given for any fee paid by mistake or in excess of that required. There was no mistake for the fees paid by the applicant. The fees were paid to keep the application active and to avoid abandonment.

The request for refund is **DISMISSED**.

/JACQUELINE STONE/

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